own evidence, "nothing was agreed". Under the circumstances there was nothing which entitled the defendant to claim relief in equity.

Whether equity will intervene to protect a tenant depends entirely on the facts of the case. This is clearly illustrated in a recent decision of the Federal Court of Malaysia. In *Ooi Ai Seng* v. *Chan Lin Lam*,[7] there was a written tenancy agreement between the parties. The plaintiff rented out a portion of his land in 1958 for the tenant to construct a wooden shed and the tenant was to pay ground rent of $6 per mensem. The tenant died in 1965 and his son the defendant took over the tenancy and was recognised by the plaintiff as the new tenant. In 1966 the plaintiff wishing to have the rented portion of the land in question for his own purpose requested the defendant to vacate the land within a month. The defendant failed to do so and the plaintiff instituted proceedings for the recovery of vacant possession of the land in question. The defendant contended that the tenancy granted to him had by being coupled with an interest in the land, became irrecoverable. The dispute eventually reached the Federal Court where *Ramsden* v. *Dyson*;[2] *Plimmer* v. *Mayor Councillors and Citizens of the City of Wellington*;[3] *Inwards* v. *Baker*;[4] *Khew Ah Bah* v. *Hong Ah Mye*;[5] *Siew Soon Wah & ors.* v. *Yong Thong Hong*;[8] *Devi* v. *Francis*;[9] *In re King's Lease-hold Estates*;[10] and *Kusel* v. *Watson*,[11] were all cited and considered. Azmi L.P. after reviewing the facts and the cases cited, observed at page 22: —

"... In the instant case, it was provided in the contract that the tenant could only construct a wooden shed on the land and the shed they had in mind and subsequently built on the land was built of corrugated iron roof, wooden posts and wire mesh walls. If there was anything at all suggesting the duration of the tenancy, the very nature of the construction would indicate a tenancy of a temporary nature, and I am therefore unable to agree with the learned judge's conclusion that there had arisen in the tenant's favour an equity of equitable estoppel protecting his occupation of the land...."

In the present case, as stated earlier, there was no doubt at all that the plaintiffs had granted the defendant a temporary gratuitous licence which they were entitled to revoke at will. The defendant acquired no rights at all, neither in law nor in equity.

When a defendant seeks relief in equity, his conduct becomes very relevant. In this case, there was no doubt at all that the defendant had come to court with unclean hands. He had abused the kindness shown to him by the plaintiffs by counterclaiming legal ownership of a large area of their land by falsely alleging adverse possession. Secondly, knowing that the plaintiffs were bound by contract to convey the land with vacant possession by a certain date, the defendant sought to extort from the plaintiffs a sum of money greater than what he had agreed to receive as compensation for moving out. On the other hand the plaintiffs were still sympathetic towards him and at the trial they renewed their offer of $5,000 compensation for his vacating their land. They were also prepared to allow him to dismantle his structure and take away the materials.

In my judgment, on the facts of this case, the defendant was not entitled to any relief either in law or in equity. As the plaintiffs had revoked the gratuitous licence under which the defendant was allowed to occupy a portion of their land, they were entitled to vacant possession of the said land. Accordingly the defendant was ordered to deliver vacant possession on or before 30th September 1973. As the plaintiffs had renewed at the trial their offer of $5,000 as compensation, they were ordered to pay this sum to the defendant upon his delivery of vacant possession of the area occupied by him. The defendant was ordered to pay the plaintiffs' costs as taxed. The defendant's counterclaim was dismissed with costs.

Claim allowed.

Solicitors: *Mallal & Namazie; Tan Thian Chua & Co.*

EASTERN SUPPLY CO. v. KERR

[C.A. (Wee Chong Jin C.J., Chua & Kulasekeram JJ.) October 4, 1973]

[Singapore — Civil Appeal No. 61 of 1972]

Contract — Sale of goods — Breach of implied conditions — Acceptance of goods by buyer — Sale of Goods Act, 1893, ss. 14 and 35.

Practice and Procedure — Appeal — Whether appellate court justified in interfering with findings of fact by trial judge.

In this case the respondent had bought a second-hand car from the appellants. The car was tested by the respondent's wife before the respondent agreed to buy it. The respondent gave the appellants a post-dated cheque in full payment. Subsequently the car was found to be defective and the appellants were informed. The respondent stopped payment on his cheque. The appellants eventually sued for the price of the car. The respondent pleaded the car was not in a roadworthy condition in breach of an express or implied term of the sale. The learned district judge who tried the case gave judgment for the appellants, on the ground that the respondent had on the evidence failed to discharge the burden that lay on him. On appeal to the High Court this judgment was reversed. It was held that there was ample evidence to show that the car was not roadworthy and that the respondent had rejected the goods within a reasonable time.

Held: (1) the appellate court erred in disturbing the conclusion of the trial judge that the respondent had failed to prove that the car was unroadworthy. There was ample evidence for the finding of the trial judge and the appellate judge ought not to have disturbed his findings.

(2) even on the assumption that the appellants were in breach of the implied conditions under section 14(1) and (2) of the Sale of Goods Act, 1893, the respondent had not rejected the car within a reasonable time and must therefore be deemed to have accepted the car.

Cases referred to:-

(1) *Bartlett* v. *Sidney Marcus Ltd.* [1965] 1 W.L.R. 1013 at p. 1017.

(2) *Leaf* v. *International Galleries* [1950] 1 All E.R. 693.

(3) *Long* v. *Lloyd* [1958] 2 All E.R. 402.

COURT OF APPEAL.

S. Michael Hwang for the appellants.

K. E. Hilborne for the respondent.

Wee Chong Jin C.J. (delivering judgment of the Court): The appellants are dealers in second-hand cars. The respondent, Mr. Kerr, is an R.A.F. officer stationed in Singapore. He does not drive but his wife does,

having possessed a driving licence for about ten years. In February 1970 they were minded to buy a second-hand car. Mrs. Kerr with a friend saw and liked an eight year old BMW Coupe 1962 model car at the appellants' premises. She visited the appellants' premises again on 12th February 1970 accompanied by her husband. On this occasion she took the car for a test drive accompanied by a Mr. Lee, the chief mechanic of the appellants. She drove the car for three miles or so.

After the test drive a bargain was struck. The respondent agreed to buy the car for $1,400 and gave the appellants a cash cheque post-dated to 1st March 1970 in full payment. He took delivery of the car two days later on Saturday 14th February 1970 through his wife who had the day before taken out a policy of insurance on the car, paid the road tax and obtained a Singapore driving licence. On the day she took delivery of the car she signed on behalf of the respondent a document which stated, *inter alia*, "I and my wife tested the said car and found to my satisfaction and take delivery on 14-2-70 time 2.30 p.m." This document also acknowledged receipt of the Registration Book and a transfer form duly signed by the previous registered owner of the car.

The next day, a Sunday, Mrs. Kerr said she had difficulty with the first and reverse gears. On Monday she said she could not get the car started and telephoned the appellants who sent a mechanic, apparently Mr. Lee, to her house who showed her how to start the car by the use of the choke. On Tuesday she again could not get the car started and the mechanic came to her house and used a spare battery to start the car. On Wednesday she had the same trouble and the car was taken to the appellants' premises and collected by her at 5 p.m. after the battery was recharged. Thereafter from Friday till the following Monday the car was all right but on that day and the next day when she was in the city she said she had great difficulty with the first and reverse gears. So on Wednesday the car was again driven to the appellants' premises and collected by her later in the afternoon. Two days later, because her daughter had asked her why she had bought a car with no tread on, she took the car to the appellants' premises and asked the manager to put retreaded tyres on the front wheels. She collected the car at 6 p.m. that day and she said that on the way back to her home the tyres "were screaming" and she had to drive on 2nd gear to drive quietly.

The next morning, Saturday 28th February, she had a visitor, a Mr. Frearson, and after telling him what she had experienced the day previous asked him to have a look at it. Mr. Frearson was also an R.A.F. officer. He had been driving cars for 30 years and for the last 7 years had done maintenance work on his own car although not a qualified motor engineer. He jacked up the car and found the front offside wheel leaning inwards at the top by about 10° from the vertical and a 3" play on the wheel. He saw a bright mark on the shock absorber where the tyre had been rubbing and thought that this could have accounted for the squeaking. He acknowledged he could not tell why there was a 3" play on the wheel and that he did not examine the front nearside wheel because he said the fault was obviously on the front offside wheel. He agreed that a 3" play could occur overnight if a kingpin broke or a component of that kind broke or the wheel had been improperly fixed after a tyre had been replaced. On his examination he advised Mrs. Kerr that the car was "unroadworthy" but if she was to drive it she should not exceed 15 to 20 m.p.h. and it would be unsafe to carry any passengers in it.

On that advice Mrs. Kerr then drove the car to the appellants' premises and told the manager of the appellants what Mr. Frearson had told her about the defects he saw and rejected the car. The same afternoon she signalled the respondent who was away at Guam on duty that she had a continuous series of defects and had encountered embarrassment in dealing with the appellants. The respondent then instructed his bankers to stop payment on his post-dated cheque.

On 3rd March 1970 the appellants, on the cheque being dishonoured, wrote to the respondent requesting payment of the agreed purchase price of $1,400 within three days. The respondent replied on 8th March 1970 stating he had stopped payment on the cheque because the car was "so defective as to be, in my opinion, unsafe to drive". The appellants turned the dispute over to their solicitors who wrote on 11th May 1970 to the respondent demanding payment within seven days. The respondent through his solicitors replied on 18th May 1970 stating, *inter alia*: —

> "In fact, the car turned out to be unroadworthy, since the whole of the front suspension of the car had collapsed and was in a very bad state. On several occasions our client's wife brought the car back but nothing was done, and she was met with the abuse to which we have already referred".

To this letter the appellants' solicitors replied on 1st June 1970 stating that the appellants had had the car tested by an approved examiner of the Automobile Association of Singapore and quoted from the examiner's report dated 30th May 1970 as follows:—

> "Car is structurally stronger than the average of the same year and same class. However, after 8 years of service, whatever repairs needed from time to time have to be accepted as normal running expenses when time comes".

Eventually the appellants on 1st July 1970 commenced an action in the District Court claiming $1,400 against the respondent for the price of the car sold and delivered on the 14th February 1970. The defence pleaded that "it was an express, or alternatively, an implied term of such sale and purchase that the said motor-car should be in a roadworthy condition so as to be safe for the purpose for which it was intended" and that the said car was neither roadworthy nor safe and was unsuitable for the purpose for which it was intended. The particulars of unroadworthiness alleged in the defence are:—

> "1. The front shock absorbers or suspension or both were in a collapsed and defective condition causing the body of the car to rub against the tyre of the car.
> 2. The steering was defective and unsafe whereby control of the said motor-car was rendered uncertain and hazardous.
> 3. The gears of the said motor-car did not function in a proper manner and were defective".

Other defences were pleaded but it is unnecessary for us to deal with them as they are no longer at issue at this stage of the proceedings. There was a counterclaim for rescission on the ground of a fundamental breach of contract on the part of the appel-

lants by reason of the unroadworthiness of the car or by reason of false and fraudulent or negligent misrepresentations but there was no counterclaim for damages for breach of contract.

After a lengthy trial the district judge gave judgment for the appellants and dismissed the counterclaim. On the issue of unroadworthiness and unsuitability for the purpose for which the car was intended the district judge in effect found that the respondent had on the evidence failed to establish the burden that lay on him. The district judge made no finding in his written judgment as to the relative credibility of the witnesses who gave evidence at the trial.

The respondent appealed to the High Court which allowed the appeal and set aside the judgment of the district judge and ordered that the appellants' claim against the respondent be dismissed. Tan Ah Tah J. in his judgment, after outlining the evidence of Mrs. Kerr and Mr. Frearson, said:—

"In my opinion the events which occurred between the 15th February and 28th February provided ample evidence to show that the car was not roadworthy. Mrs. Kerr cannot be considered to be a novice as she had been driving motor cars for a period of 10 years. It is true that she appeared to know very little about the engine and the internal mechanism of motor cars but she was not a beginner or learner-driver of a car".

Tan Ah Tah J. thus differed from the conclusion arrived at by the trial judge who had in his judgment dealt specifically with the three particulars of unroadworthiness pleaded in the defence and had considered all the evidence, both oral and documentary, before him at the trial. It is to be observed that Tan Ah Tah J. gave no reason why he accepted the evidence of Mrs. Kerr and Mr. Frearson and would appear to have failed to consider the evidence of the appellants' witnesses, including the documentary evidence adduced at the trial. In our opinion the appellate judge erred in disturbing the conclusion of the trial court that the respondent had failed to prove the car was unroadworthy as pleaded in his particulars of unroadworthiness.

The vital issue was whether or not the seller was in breach of the implied conditions under section 14(1) and/or section 14(2) of the Sale of Goods Act 1893. The burden lay on the buyer to prove facts which would in law amount to the car being either (a) not reasonably fit for the purpose for which it is required, assuming that it is proved that he relies on the seller's skill or judgment and the car is of a description which it is in the course of the seller's business to supply, or (b) of unmerchantable quality.

The test as to merchantability and as to reasonably fit for the purpose has been propounded by Denning L.J. in *Bartlett* v. *Sidney Marcus Ltd.*[1] in these words: -

"It means that on the sale of a secondhand car, it is merchantable if it is in usable condition, even though not perfect. This is very similar to the position under section 14(1). A secondhand car is 'reasonably fit for the purpose' if it is in a roadworthy condition, fit to be driven along the road in safety, even though not as perfect as a new car".

Denning L.J. then went on to say, having regard to the facts of that case, which was the sale of a secondhand Jaguar Car for £950:—

"Applying these tests here, the car was far from perfect. It required a good deal of work to be done on it. But so do many secondhand cars. A buyer should realise that when he buys a secondhand car defects may appear sooner or later; and in the absence of an express warranty, he has no redress. Even when he buys from a dealer the most he can require is that it should be reasonably fit for the purpose of being driven along the road. This car came up to that requirement. The plaintiff drove the car away himself. It seemed to be running smoothly. He drove it for four weeks before he put it into the garage to have the clutch repaired. Then more work was necessary than he anticipated. But that does not mean that, at the time of the sale, it was not fit for use as a car. I do not think that, on the judge's findings, there was any evidence of a breach of the implied conditions".

In the present case, the respondent and his wife chose the car themselves. There was no express warranty. The car was eight years old. The price was $1,400 which, although there is no direct evidence, was but a small fraction of the price of a new BMW-700 Coupe car. The respondent's wife had a test drive and the respondent agreed to buy the car after the test drive. She used it for about two weeks before she eventually rejected it. During the two weeks there were minor defects such as a weak battery, difficulty in engaging the first and reverse gears and lack of tread on the tyres. These were defects which a reasonable man acting reasonably would accept under the circumstances of the case in performance of his offer to buy this secondhand car of this vintage and at the price paid. There is thus left the defects which Mr. Frearson, who is admittedly not testifying as an expert witness, said he found, These are disputed by the appellants. The two approved examiners, who must be accepted as experts, did not find the defects seen by Mr. Frearson. The trial judge found that Mr. Frearson had not satisfied him that the car had these defects. There was ample evidence for his finding and in our judgment Tan Ah Tah J. ought not to have disturbed his finding and was wrong in relying on the events which occurred during the fortnight when Mrs. Kerr had the car and was using it as ample evidence that the car was unroadworthy.

Even on the assumption that the appellants were in breach of the implied conditions under section 14(1) and (2) of the Sale of Goods Act 1893, there is another ground for restoring the judgment of the trial court. Under section 35 the buyer is deemed to have accepted the goods, *inter alia*, "when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them". Once a buyer is deemed to have accepted the goods, he loses his right to reject for breach of conditions but can only claim for damages [see section 11(1)(c)]. It is always a question of fact whether or not a reasonable time has elapsed so as to preclude a buyer from rejecting the goods. The trial judge did not consider this issue presumably because he had found that the car was not unroadworthy. However, Tan Ah Tah, J. found the respondent "had rejected the goods within a reasonable time". He relied on the case of *Leaf* v. *International Galleries.*[2] That was a case of a contract of sale of a picture said to be painted by Constable. Five years after the buyer took the picture into his house he discovered it was not a Constable and he claimed for rescission of the contract on the ground of innocent misrepresentation. Denning L.J. found that the term was a condition and not a warranty and that the right to reject for breach of conditions has always been limited by the rule that once a buyer

has accepted, or is deemed to have accepted, the goods in performance of the contract, he cannot thereafter reject, but is relegated to a claim for damages (section 11(1)(c) of the Sale of Goods Act 1893).

Denning L.J., applying section 35, found that five years after taking the picture before intimating rejection is much more than a reasonable time. Towards the end of his judgment Denning L.J. said at page 695:—

"In this case the buyer must clearly be deemed to have accepted the picture. He had ample opportunity to examine it in the first few days after he had bought it. Then was the time to see if the condition . . . was fulfilled. . . ."

A more relevant case, in our opinion, is the case of *Long* v. *Lloyd*.[3] There the plaintiff, a haulage contractor had in response to an advertisement by the defendant, also a haulage contractor, for sale of a 1947 secondhand lorry described as "in exceptional condition" for £850, saw the lorry at the defendant's premises and had a trial run. He found the speedometer was not working, that the spring was missing from the accelerator pedal and that he had difficulty with the top gear. After being assured by the defendant that he had been told all that was wrong with the lorry and after he was told that the lorry did eleven miles to the gallon, he bought it for £750 and drove it home, a not inconsiderable distance. Two days later he used it in his business driving it to another town and back with a load. By the time he returned from that journey he knew the dynamo was not charging, there was an oil seal leaking, a wheel was cracked and he had used eight gallons for a journey of forty miles. He then telephoned to the defendant and complained about the dynamo, the leaking oil seal, the cracked wheel and the excessive fuel consumption. The defendant offered to pay half the cost of the reconstructed dynamo which the plaintiff had been advised to fit and the plaintiff accepted this offer. The following day the plaintiff, knowing all he did about the condition and performance of the lorry despatched it on a long business trip and the lorry broke down. He wrote to the defendant stating he would return the lorry and asking for his money back. About three weeks later the lorry was examined by an expert who gave evidence of many serious defects which in his opinion made it unroadworthy. The plaintiff sued the defendant for rescission of the contract on the ground of the defendant's innocent misrepresentation. He failed in his action and on appeal he also failed.

The Court of Appeal held that, assuming the plaintiff had a right of rescission which survived the completion of the contract on the ground of innocent misrepresentation, the right of rescission was barred by acceptance of the goods sold. Pearce L.J. who delivered the judgment of the Court of Appeal said at page 407:—

"As to the facts of the present case, counsel for the plaintiff contrasts the period of only a few days between the delivery of the lorry to the plaintiff and his purported rescission of the contract with the period of five years in *Leaf's* case. He says the plaintiff was entitled to a reasonable time within which to ascertain the true condition of the lorry and to exercise (if so advised) the right of rescission which for the present purpose he must be assumed to have had. It is of course obvious that so far as time is concerned this case bears no resemblance to *Leaf's* case. Nevertheless a strict application to the facts of the present case of Denning L.J's view to the effect that the right (if any) to rescind after completion on the ground of innocent misrepresentation is barred by acceptance of the goods must necessarily prove fatal to the plaintiff's case. Apart from special circumstances, the place of delivery is the proper place for examination and for acceptance. It was open to the plaintiff to have the lorry examined by an expert before driving it away but he chose not to do so. It is true, however, that the truth of certain of the representations, for example, that the lorry would do eleven miles to the gallon could not be ascertained except by user and therefore the plaintiff should have a reasonable time to test it. Until he had had such an opportunity it might well be said that he had not accepted the lorry, always assuming, of course, that he did nothing inconsistent with the ownership of the seller. An examination of the facts, however, shows that on any view he must have accepted the lorry before he purported to reject it."

Similarly, in the present case, there being no special circumstances present, the place of delivery i.e. the appellants' premises, was the proper place for examination and for acceptance. It was open to the respondent to have the car examined by an expert before having it driven away. He chose not to do so. Instead he used the car by the use made of it by his wife for about two weeks. When during the course of the first few days the various minor defects which we have earlier referred to became apparent to his wife, he again had the opportunity of having the car examined by an expert but chose not to do so. Had he done so and an expert had found the front offside wheel leaning inwards at the top by about 10° from the vertical, a 3" play on the wheel and a bright mark on the shock absorber and the expert could say that those defects were serious defects which in the expert's opinion made the car unroadworthy and he had then rejected the car, the defence of a breach of the implied conditions under section 14 of the Sale of Goods Act in answer to the present claim by the appellants might well have found favour with the trial judge.

In our judgment there was no sufficient evidence for Tan Ah Tah J., on appeal, to arrive at a finding that the respondent had rejected the car within a reasonable time. In our judgment on all the facts and circumstances of this case the respondent had accepted or must be deemed to have accepted the car before he eventually rejected it. It follows, in our opinion, even on the assumption that the appellants were in breach of the implied conditions under section 14 of the Sale of Goods Act 1893, that the respondent had no valid defence to the plaintiff's claim for the price of the car.

The appeal will be allowed, the judgment of Tan Ah Tah J. set aside, and the judgment of the trial court restored with costs here and in the courts below.

Appeal allowed.

Solicitors: *Allen & Gledhill; Hilborne & Co.*